

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARPU VENUGOPAL,

No. C 12-2452 CW

Plaintiff,

ORDER DENYING  
MOTION TO DISMISS  
(Docket No. 29)

v.

CITIBANK, NA,

Defendant.

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Defendant Citibank, NA moves to dismiss Plaintiff Marpu Venugopal's first amended complaint (1AC) for failure to state a claim. Plaintiff opposes the motion. After considering the parties' submissions and oral argument, the Court denies Defendant's motion.<sup>1</sup>

BACKGROUND

On January 22, 2013, Plaintiff filed a 1AC alleging that Defendant reported inaccurate information about his finances to various credit reporting agencies. 1AC ¶¶ 12-20. Specifically, Plaintiff claims that Defendant reported an outstanding debt of \$197,466 even though that debt had been discharged in a June 2009 bankruptcy proceeding. Id.

According to the 1AC, Plaintiff first learned of the inaccuracy on May 2, 2011, when he received a credit report claiming that he still owed an outstanding debt to Defendant. Id. Three days later, on May 5, Plaintiff sent letters to the three

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<sup>1</sup> The Court indicated at the hearing that it would grant Defendant's motion with leave to amend. However, after further consideration of the parties' papers, the Court finds that further amendment is unnecessary.

1 credit reporting agencies who compiled the report -- Experian,  
2 Equifax, and TransUnion -- to dispute the outstanding debt. Id.  
3 The letters requested that the agencies conduct "a formal, full,  
4 and complete investigation of the information [Defendant]  
5 furnished" to the agencies about his finances. Id. ¶ 16.  
6 Although Plaintiff himself never contacted Defendant to dispute  
7 the debt, he alleges that Experian, Equifax, and TransUnion "sent  
8 notice of his dispute" to Defendant. Id.

9 Two weeks after writing to the credit reporting agencies,  
10 Plaintiff requested new credit reports to confirm that the  
11 misreported debt had been removed. He has attached excerpts from  
12 four of these credit reports to his 1AC. Id. ¶¶ 17-20, Ex. A.  
13 Plaintiff concedes that three of these four reports show that  
14 Defendant properly reported the discharge of his debt to Equifax  
15 and TransUnion.<sup>2</sup> Id. ¶ 17. He asserts, however, that the fourth  
16 report provides documentation of Defendant's reporting failure.

17 That report, issued by Experian on May 17, 2011, displays an  
18 outstanding debt of zero dollars and notes that Plaintiff's  
19 previous debt to Defendant was "included in Chapter 7 Bankruptcy  
20 on June 23, 2009." Id., Ex. B, at 1. But the next page of the  
21 report includes a debt timeline indicating that Plaintiff owed  
22 Defendant an outstanding debt of \$197,466 between May 2009 and  
23 March 2011. Id. at 2. Because the debt timeline does not refer  
24 to his 2009 bankruptcy, Plaintiff alleges that the timeline shows  
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27 <sup>2</sup> Plaintiff initially argued that two of the four reports contained  
28 evidence of Defendant's alleged reporting failures but conceded at the  
hearing that only one report actually supports his allegations here.

1 that Defendant "re-reported the disputed overdue payments" after  
2 he initiated his dispute with Experian. Id. ¶ 18.

3 Based on this report, Plaintiff asserts that Defendant  
4 misreported his debt to Experian in violation of the Fair Credit  
5 Reporting Act (FCRA), 15 U.S.C. § 1681s-2(b); the Consumer Credit  
6 Reporting Agencies Act (CCRAA), Cal. Civ. Code § 1785.25; and the  
7 Unfair Competition Law (UCL), Cal. Bus. & Prof. Code § 17200. Id.  
8 ¶¶ 24-65.

#### 9 LEGAL STANDARD

10 A complaint must contain a "short and plain statement of the  
11 claim showing that the pleader is entitled to relief." Fed. R.  
12 Civ. P. 8(a). On a motion under Rule 12(b)(6) for failure to  
13 state a claim, dismissal is appropriate only when the complaint  
14 does not give the defendant fair notice of a legally cognizable  
15 claim and the grounds on which it rests. Bell Atl. Corp. v.  
16 Twombly, 550 U.S. 544, 555 (2007). In considering whether the  
17 complaint is sufficient to state a claim, the court will take all  
18 material allegations as true and construe them in the light most  
19 favorable to the plaintiff. NL Indus., Inc. v. Kaplan, 792 F.2d  
20 896, 898 (9th Cir. 1986). However, this principle is inapplicable  
21 to legal conclusions; "threadbare recitals of the elements of a  
22 cause of action, supported by mere conclusory statements," are not  
23 taken as true. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)  
24 (citing Twombly, 550 U.S. at 555). Although the court is  
25 typically confined to consideration of the allegations in the  
26 pleadings, when the complaint is accompanied by attached  
27 documents, such documents are deemed part of the complaint and may  
28 be considered in evaluating the merits of a Rule 12(b)(6) motion.

1 Durning v. First Boston Corp., 815 F.2d 1265, 1267 (9th Cir.  
2 1987).

3 When granting a motion to dismiss, the court is generally  
4 required to grant the plaintiff leave to amend, even if no request  
5 to amend the pleading was made, unless amendment would be futile.  
6 Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv. Inc., 911  
7 F.2d 242, 246-47 (9th Cir. 1990). In determining whether  
8 amendment would be futile, the court examines whether the  
9 complaint could be amended to cure the defect requiring dismissal  
10 "without contradicting any of the allegations of [the] original  
11 complaint." Reddy v. Litton Indus., Inc., 912 F.2d 291, 296 (9th  
12 Cir. 1990).

#### 13 DISCUSSION

##### 14 A. Violations of the FCRA (First Cause of Action)

15 The FCRA was enacted "to ensure fair and accurate credit  
16 reporting, promote efficiency in the banking system, and protect  
17 consumer privacy." Safeco Ins. Co. of Am. v. Burr, 551 U.S. 47,  
18 52 (2007). To achieve this goal, it "imposes some duties on the  
19 sources that provide credit information to CRAs, called  
20 'furnishers' in the statute." Gorman v. Wolpoff & Abramson, LLP,  
21 584 F.3d 1147, 1162 (9th Cir. 2009). These duties are triggered  
22 whenever a credit reporting agency notifies the furnisher that a  
23 consumer has disputed information that it provided to the agency.  
24 Id.; 15 U.S.C. § 1681s-2(b)(1). Once this occurs, the furnisher  
25 must "conduct an investigation with respect to the disputed  
26 information," "review all relevant information provided by the  
27 consumer reporting agency" about the dispute, and correct any  
28 inaccuracies. Id.; see also Nelson v. Chase Manhattan Mortg.

1 Corp., 282 F.3d 1057, 1059 (9th Cir. 2002) (describing furnisher's  
2 duties under the FCRA). If the furnisher fails to carry out any  
3 of these duties, the consumer who initiated the dispute may sue  
4 the furnisher. 15 U.S.C. § 1681o; Nelson, 282 F.3d at 1059.

5 Here, Plaintiff asserts that Defendant breached its FCRA  
6 duties by failing to notify Experian that his debt had been  
7 discharged in a prior bankruptcy proceeding. As noted above, this  
8 allegation is based entirely on the May 17, 2011 credit report  
9 attached to Plaintiff's 1AC.

10 The May 17, 2011 credit report issued by Experian expressly  
11 states that Plaintiff's debt to Defendant was "included in [his]  
12 Chapter 7 Bankruptcy on June 23, 2009." 1AC, Ex. B, at 1.  
13 However, another section of the credit report -- the debt  
14 timeline -- indicates that Plaintiff owed a debt to Defendant  
15 between May 2009 and March 2011. Construed in the light most  
16 favorable to Plaintiff, this report supports Plaintiff's claim  
17 that Citibank continued to misreport Plaintiff's debt history even  
18 after Plaintiff initiated his dispute with Experian. Accordingly,  
19 he has stated a valid claim under the FCRA.

20 B. Violations of the CCRAA (Second Cause of Action)

21 The CCRAA prohibits "furnish[ing] information on a specific  
22 transaction or experience to any consumer credit reporting agency  
23 if the person knows or should know the information is incomplete  
24 or inaccurate." Cal. Civ. Code § 1785.25(a). The CCRAA imposes  
25 civil liability for a broader range of conduct than the FCRA,  
26 Mortimer, 2012 WL 3155563, at \*5 ("Unlike the FCRA, the CCRAA  
27 includes a private right of action to enforce the prohibition  
28 against supplying incomplete or inaccurate consumer credit

1 information." ). Because Plaintiff has alleged sufficient facts to  
2 support his FCRA claim, he has also alleged sufficient facts to  
3 support his CCRAA claim.

4 C. Violations of the UCL (Third Cause of Action)

5 Plaintiff's UCL claim is based on violations of the FCRA and  
6 CCRAA. Because both of those claims survive, so, too, does his  
7 UCL claim.

8 CONCLUSION

9 For the reasons set forth above, the Court DENIES Defendant's  
10 motion to dismiss (Docket No. 29). Defendant must file its answer  
11 within twenty-one days of this order.

12 IT IS SO ORDERED.

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14 Dated: April 3, 2013

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16 CLAUDIA WILKEN  
17 United States District Judge  
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